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**AUG 01 2006**

**OFFICE OF PETITIONS**

In re Application of

Bentwich

Application No. 10/649,653

Filed: August 28, 2003

For: BIOINFORMATICALLY DETECTABLE GROUP

OF NOVEL REGULATORY GENES AND USES

THEREOF

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: DECISION ON PETITION  
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This is a decision on the petition filed August 28, 2003, requesting under 37 CFR 1.183, waiver of 37 CFR 1.52(e).

The petition considered under 37 CFR 1.183 is **granted**. The delay in treating this petition is sincerely regretted

Petitioner notes that the parent application contained a combination of written material and 2 disks of information, that encountered problems in its processing. Petitioner asserts that due to the unusually large size of the instant continuation application, the USPTO's Electronic Filing System (EFS) was not able to process the application via the Internet or at the USPTO due to software problems originating at the USPTO. As such, petitioner asserts, this application was filed on an original and copy CD-R containing the specification and ADS in "XML" format, large tables and the sequence listing in ASCII format, (both being zip files) rather than in the standard EFS format of a large, encrypted file. Petitioner further asserts that no new matter has been introduced. Petitioner indicates that he has further consulted with several USPTO employees who have, in light of the recounted problems, recommended the instant procedure.

It is agreed that under the circumstances of this case justice would be served by waiver of the rules and acceptance of the application papers in the format as submitted. Whether the information therein actually confers a filing date, etc. can only be determined after the USPTO processes the disk.

It is noted that in the interim, the USPTO, based solely on the content of this IFW application that contained files on the disks that did not appear in the IFW record, mailed a Notice of Incomplete Non Provisional Application on May 30, 2005, indicating that the instant application had not received a filing date, and in turn, on October 4, 2005, mailed a Notice of Termination of Proceedings under 37 CFR 1.53(e). Such communications must be **vacated** as premature, given this decision.

This application is being referred to the Office of Initial Patent Examination (OIPE) for further processing. Any questions pertaining to OIPE processing must be referred to the OIPE hotline at (571) 272-4000. Any questions relating to the Electronic Business Center (EBC) processing of the disks etc. must be referred to the EBC hotline at (866) 217-9197 (toll-free) or (571) 272-4100.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3217.

Brian Hearn  
Petitions Examiner  
Office of Petitions